

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

vs.

**No. CIV 98-0231 HB/JHG
 CR 90-309 HB**

SALVADOR GARCIA,

Defendant-Movant.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

This matter is before the Court on Garcia's Motion to Correct Sentence under Fed.R.Crim.P. 36, construed as a Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255. Garcia attacks the Judgment and Commitment Order entered on April 8, 1993, in the case styled *United States of America v. Salvador Garcia*, and numbered CR 90-309 HB, United States District Court for the District of New Mexico. The United States Magistrate Judge, having considered the arguments, pleadings, relevant law, and being otherwise fully informed, finds the motion to be well-taken and recommends it be GRANTED.

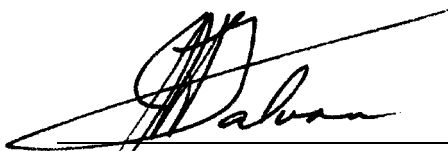
Garcia requests the Court correct the above-referenced Judgment and Commitment Order to run the sentence imposed concurrently with the sentence imposed in the case styled *United States of America v. Salvador Garcia*, and numbered No. EP-92-CR-18H-6, United States District Court for the Western District of Texas. The Government concurs in Garcia's motion, representing the 103.4 pounds of marijuana for which Garcia was sentenced in 90-309 HB was the same 103.4 pounds of

marijuana for which he was sentenced in EP-92-CR-18H-6. Government's Response to Defendant's Motion to Correct Judgment Order filed September 9, 1998.

The United States Magistrate Judge finds the motion was filed within one year of the date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence. Under the circumstances, in order to avoid manifest injustice, Garcia's motion should be granted.

RECOMMENDED DISPOSITION

Garcia's Motion to Correct Sentence under Fed.R.Crim.P. 36, construed as a Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255, should be granted. The Judgment and Commitment Order, entered on April 8, 1993, in the case styled *United States of America v. Salvador Garcia*, and numbered CR 90-309 HB, should be amended, *nunc pro tunc*, to April 8, 1993, to run the sentence imposed in CR 90-309 HB concurrently to the sentence in EP-92-CR-18H-6.



JOE H. GALVAN
UNITED STATES MAGISTRATE JUDGE

NOTICE

Within ten days after a party is served with a copy of these proposed findings and recommended disposition that party may, pursuant to 28 U.S.C. § 636 (b)(1), file written objections to such proposed findings and recommended disposition. A party must file any

objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.